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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/088,543	03/19/2002	Masanori Tohnishi	46/168	6952

20736 7590 12/24/2002
MANELLI DENISON & SELTER
2000 M STREET NW SUITE 700
WASHINGTON, DC 20036-3307

EXAMINER

BALASUBRAMANIAN, VENKATARAMAN

ART UNIT	PAPER NUMBER
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1624

DATE MAILED: 12/24/2002

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/088,543

Applicant(s)

TOHNISHI ET AL.

Examiner

Venkataraman Balasubramanian

Art Unit

1624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 March 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1-6 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claims 1-6 are pending after entering preliminary amendments A, B, C, filed on 3/19/200.

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 1-6, drawn compound of formula I where Q¹, Q², Q³ and Q⁴ are all carbons, namely substituted benzene amide compound, composition and method of use.

Group II, claims 1-6, drawn compound of formula I where one of the pair Q¹-Q², Q²-Q³ or Q³-Q⁴ are nitrogens and all other two pairs are carbons, namely substituted isomeric pyridazine amide compound, composition and method of use.

Group III, claims 1-6, drawn compound of formula I where Q¹ and Q³ or Q² and Q⁴ are nitrogens and the other carbons, namely substituted pyrimidine amide compound, composition and method of use.

Group IV, claims 1-6, drawn compound of formula I where Q¹ and Q⁴ are both nitrogen and Q² and Q³ are carbons, namely substituted pyrazine amide compound, composition and method of use.

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Group V, claims 1-6, drawn compound of formula I where Q^1 , Q^2 , Q^3 or Q^2 , Q^3 , Q^4 are all nitrogen and the other a carbon, namely substituted 1,2,3-tirazine amide compound, composition and method of use.

Group VI, claims 1-6, drawn compound of formula I where Q^1 , Q^2 , Q^4 or Q^1 , Q^3 , Q^3 are nitrogen and the other a carbon, namely substituted 1,2,4-tirazine amide compound, composition and method of use.

Group VII, claims 1-6, drawn compound of formula I where Q^1 , Q^2 , Q^3 and Q^4 are all nitrogens, namely substituted 1,2,3,4-tetrazine amide compound, composition and method of use.

The inventions listed as Groups I-VII do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The requirement for unity of invention is two-fold: (1) common utility and (2) sharing a substantial structural feature disclosed as being essential to the utility.

Group I-VII are independent and distinct from each other because they are directed to dissimilar compounds with varying heteroaryl cores namely phenyl, isomeric pyridinyl, isomeric pyrimidinyl, isomeric pyridazinyl, pyrazinyl, isomeric triazinyl, and tetrazinyl with same disubstituted amide side chains, which are not art recognized equivalent of each other. Consequently, the groups are distinct and require separate prior art searches. They can be made and used independently. Art, which may render obvious or anticipate one of the groups would not necessarily do the same for the other group as evident from the references cited in the Information Disclosure Statement. See EP 919

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542 and EP 799 825. Each can support a patent, as the compounds of each group are capable of being utilized alone not in combination with other members listed in the Markush group. The sole feature common to the groups which does not vary is the presence of C=C in the hetero aryl ring bearing the diamide substituents which by itself cannot be considered to define patentable contribution over prior art given such fragment with substituents is known as evidenced by the art cited in the description and therefore would not constitute a special technical feature as defined by PCT Rule 13.2. The common utility requirement is also not met with as seen in the prior art cited above the compounds can be used either as insecticides or herbicides. Thus more than one utility such as herbicides, or insecticides recited in the references cited in the Information Disclosure Statement of structurally related compounds negates the common distinct utility requirement.

Due to distinct nature of each of the inventions, a restriction is set forth in writing.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(l).

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Conclusion

Any inquiry concerning this communication from the examiner should be addressed to Venkataraman Balasubramanian (Bala) whose telephone number is (703) 305-1674. The examiner can normally be reached on Monday through Thursday from 8.00 AM to 6.00 PM. The Supervisory Patent Examiner (SPE) of the art unit 1624 is Mukund Shah whose telephone number is (703) 308-4716. The fax phone number for the organization where this application or proceeding is assigned (703) 308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

V. Balasubramanian
Venkataraman Balasubramanian

12/19/2002